

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

ROBERT A.

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2011010999

DECISION DENYING APPEAL

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 23, 2011, in Pomona. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by his mother.<sup>1</sup>

Judith A. Enright, Esq., Enright & Ocheltree, represented the San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

ISSUE

May the Service Agency reduce Claimant's authorized monthly rate for supported living services (SLS) to \$4,670.96?

FACTUAL FINDINGS

*Parties and Jurisdiction*

1. Claimant is a 46-year-old man who is a consumer of the Service Agency with the qualifying diagnoses of severe mental retardation, autism, and a seizure disorder.

2. For the past several years, the Service Agency has provided funding for Claimant to receive supported living services (SLS). Claimant's mother is, and has been, the vendor of the SLS program. The current funding rate of the SLS is \$6,514.20 per month.

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<sup>1</sup> Initials and family titles are used to protect the privacy of Claimant and his family.

3. By a Notice of Proposed Action dated January 12, 2011, the Service Agency proposed to reduce Claimant's monthly SLS rate to \$1,276.21. The Service Agency described the reason for its proposed action as, "the new rate of reimbursement for [SLS] takes into consideration the reported administrative expenses, such as accounting expenses, liability insurance and office costs, in addition to the payroll, various employer taxes, health insurance for employees and workers' compensation insurance. It also takes into account that [Claimant] receives the maximum number of 283 In-Home Support Services (IHSS) hours per month and that [the Service Agency] pays for day program services. [The Service Agency] has determined that you do not meet the exception criteria for rent, mortgage, and lease payments or household expenses per [Welfare and Institutions Code section 4689, subdivision (i)(1)(A)].

4. On January 19, 2011, Claimant's mother timely submitted a Fair Hearing Request on behalf of Claimant, in which she appealed the proposed rate reduction. In the Fair Hearing Request, she stated that reducing the monthly rate would endanger her son, and that reducing the rate would result in her being replaced by an agency SLS provider, which she contended would not be cost-effective.

5. On March 8, 2011, Claimant's mother and the Service Agency participated in an informal meeting pursuant to Welfare and Institutions Code section 4710.7.<sup>2</sup> Based on the information exchanged at that meeting, the Service Agency informed Claimant's mother that it intended to authorize SLS funding of \$4,670.96 per month.

6. The initial July 26, 2011 hearing date was continued at the request of Claimant's mother because she was unavailable, due to health reasons, until no earlier than August 30, 2011. In requesting the continuance, Claimant's mother executed a written waiver of the time limit prescribed by law for holding the hearing and for the administrative law judge to issue a decision.

7. The Service Agency has provided Claimant "aid-paid-pending" funding for the service in question while this matter has been pending (Welf. & Inst. Code, § 4715, subd. (a).)

8. For reasons explained in more detail below, on August 29, 2011, the Service Agency terminated Claimant's mother's vendorization as Claimant's SLS provider. She did not appeal the termination of her vendorization and it became final. However, to avoid conflict with this matter, the Service Agency advised Claimant's mother that she would be permitted to continue functioning as a parent-coordinated SLS vendor pending the outcome of this case. Therefore, the monthly SLS rate determined in this Decision will only be effective until a new provider takes over Claimant's SLS program.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise referenced.

### *Claimant's Background Information*

9. Claimant requires total care for his activities of daily living, bathing, dressing, grooming, hygiene, and meal preparation. He has no safety awareness in his home or in the community. He is ambulatory but non-verbal.

10. Claimant's mother and her husband, Claimant's step-father, are also Claimant's co-conservators.

11. Claimant attends a day program each weekday.

12. Claimant lives in a home owned by his mother and his step-father. Though his parents contend the title to the property is in their name by mistake as a result of a recent refinance of the property, their testimony on that point was unpersuasive. They still have not changed the title out of their names. Claimant lives by himself and his two SLS employees Delia and Fernando, a married couple. This is his preferred living arrangement. The SLS employees assist Claimant, as necessary, to ensure his safety and independence. As the SLS vendor, Claimant's mother oversees the program and handles the hiring and maintaining of the SLS employees. There was no dispute that Claimant's SLS employees have cared for him appropriately, and have concern for Claimant's well being.

### *The Dispute Over the SLS Funding Rate*

13. In June 2010, the Service Agency requested that Claimant's mother provide documentation to show compliance with regulatory and statutory requirements for SLS vendors. The Service Agency requested specific tax and workers' compensation insurance documents for 2009. The Service Agency sent a similar request to a number of service vendors to fulfill its mandated obligation to ensure vendor accounting and expenditure compliance with the Lanterman Act and other pertinent laws and regulations.

14. Claimant's mother provided some responsive information in August 2010, but her submission was incomplete. The evidence did not establish what documents she provided the Service Agency, but there was no dispute that she did not provide the Service Agency with much of the requested documentation.

15. Based on her unresponsive submission, the Service Agency became concerned that Claimant's mother was using SLS payments to purchase household expenses in violation of the Lanterman Developmental Disabilities Services Act (Lanterman Act), and that Claimant's mother was not requiring the SLS employees to pay their share of the rent, mortgage, or lease, also in violation of the Lanterman Act. The Service Agency was further concerned that Claimant's mother was including these prohibited costs in her monthly SLS expenses for Claimant.

16. In September 2010, the Service Agency informed Claimant's mother that it intended to review her SLS cost records for 2009, "to determine if the incurred costs justify

the rate being paid by the regional center to you,” and “verify that you complied with Title 17 of the California Code of Regulations,” as well as other state and federal laws and regulations. The Service Agency identified the financial documents it requested for its review.

17. On October 5, 2010, two of the Service Agency’s fiscal monitors met with Claimant’s mother, Claimant’s step-father, and Joyce Wells, Claimant’s mother’s accountant. They discussed Claimant’s mother’s documentation supporting Claimant’s SLS expenses. Pursuant to their meeting, the Service Agency informed Claimant’s mother that it found “several areas of concern,” and further informed Claimant’s mother that the Service Agency would perform a cost verification audit. The areas of concern included 1) paying “several thousand dollars worth of household expenses” using Service Agency funds intended for SLS, 2) the absence of evidence that live-in staff pay their share of rent, mortgage, lease, or household payments, and 3) claimed wages by Claimant’s mother and step-father characterized as “professional services.”

18. In October 2010, the Service Agency informed Claimant’s mother by letter that it would calculate a new monthly rate, “based on deducting the prohibited expenditures . . . previously factored into the reimbursement and include only allowable costs.” The Service Agency wrote, “[w]e are requesting that within the next 30 days you must submit an updated proposal with a calendar of support activities that reflect ‘the actual hours of support provided’. Authorized hours and the development of a new SLS contract will be based on this proposal.” In that same letter, the Service Agency demanded that Claimant’s mother cease using SLS funds to pay for rent, mortgage, lease or household payments.

19. Claimant’s mother did not respond to the October 2010 letter. Instead, she made a presentation to the Service Agency’s Board of Directors at a meeting held in October 2010. The evidence did not establish Claimant’s mother’s particular presentation.

20. In December 2010, the President of the Service Agency’s Board of Directors wrote to Claimant’s mother and explained that the Service Agency’s initial correspondence in June 2010 was sent with the purpose of ensuring the Service Agency and its vendors comply with the Lanterman Act and other state and federal laws. The Board President wrote, “the Board . . . encourages you to conform to the requirements as a [SLS] provider and to provide all of the information requested in the June 10, 2010, memorandum. When this is accomplished you can move forward with systems that are in compliance with the Lanterman Act and as an Employer of Record.” Claimant’s mother did not submit the documentation requested.

21. Claimant’s mother continued to submit invoices to the Service Agency, as she had previously done, and failed to deduct costs related to rent, mortgage, lease, or household payments.

22. (A) In a letter dated December 28, 2010, the Service Agency reminded Claimant’s mother of the prohibited expenditures she was making under SLS, as described in its October 2010 correspondence. It wrote, “[t]hese prohibited expenses were clarified and incorporated into the Lanterman Act as part of the budget act for Fiscal Year 2009-2010.

However, for the past two months since receiving the October 28th letter instructing you to stop billing for prohibited expenses, you have continued to bill for the same number of total hours and the same dollar amount as before, which includes prohibited expenses.”

(B) The Service Agency further noted that Claimant’s mother had failed to respond with an updated proposal of support activities reflecting the actual SLS hours. Based on what the Service Agency conceded was inadequate data provided by Claimant’s mother, and considering Claimant’s care needs and the services he received, the Service Agency could only render a monthly SLS payment of \$1,276.21.

23. As it had informed Claimant’s mother at the October 5, 2010 meeting, the Service Agency conducted an audit of Claimant’s mother’s SLS costs and payments for 2009. On January 31, 2011, the Service Agency mailed Claimant’s mother a copy of the draft audit report and informed her that she had 30 days from receipt of the report to respond in writing to the audit’s findings and recommendations.

24. The draft audit made the following findings, among others: 1) Claimant’s mother did not provide adequate documentation to verify Claimant’s SLS, including \$47,963.67 in unreconciled payments, \$56,319.58 in unallowable SLS expenses, and salary costs to the SLS employees that were not recorded in the general ledger; 2) the hourly billing was not representative of the service hours performed; 3) Claimant’s mother failed to segregate costs payable by Claimant’s Social Security benefits; 4) there was no written labor agreement with Claimant’s SLS employees; and 5) Claimant’s mother failed to exercise proper accounting procedures to record expenses. The audit recommended that Claimant’s mother record actual SLS expenses, obtain a valid billing rate that is representative of the service being provided, reconcile and credit costs paid by generic resources, provide the Service Agency with written labor agreements with SLS employees, and improve her internal controls.

25. Claimant’s mother did not respond to the draft audit.

26. The Service Agency mailed Claimant’s mother a copy of the final audit on March 10, 2011. The final audit found and recommended as set forth above. The Service Agency informed Claimant’s mother that if she disagreed with the audit, she could file a “Statement of Disputed Issues” with the Department of Developmental Services (DDS) Audit Appeals Unit in Sacramento, California.

27. Claimant’s mother did not file a statement of disputed issues appealing the results of the final audit, and it became final.

28. During the spring of 2011, the parties engaged in some correspondence in an effort to resolve this matter, including Claimant’s mother sharing limited and incomplete information with the Service Agency.

29. On July 28, 2011, the Service Agency requested that Claimant’s mother provide payroll documentation and proof of other allowable SLS expenditures for 2010. The Service Agency had requested the same information before without success. The Service

Agency informed Claimant's mother that her failure to respond to this request within 30 days would require the Service Agency to terminate her SLS vendorization. Claimant's mother never responded to the Service Agency's July 2011 letter.

30. On August 29, 2011, the Service Agency informed Claimant's mother that it terminated her vendorization, effective that same day. The Service Agency wrote, "[h]owever, to avoid conflict with the Office of Administrative Hearings, we will permit you to function as a parent-coordinated supported living services vendor pending determination of the pending appeals." Claimant's mother filed no appeal to the August 29, 2011 notice of termination.

### *Claimant's Evidence and Arguments*

31. Claimant's mother was unpersuasive in her testimony that the Service Agency was unclear in identifying acceptable SLS expenses or how she should document them. To an extent, she contended that she did not know what expenses were proper for SLS. However, the Service Agency only requested specific and commonly referred-to documents; its requests did not constitute a complicated accounting procedure. Furthermore, in October 2010, the Service Agency's fiscal monitors met with Claimant's mother, Claimant's step-father, and Claimant's mother's accountant. Claimant's mother works as an advocate for other consumers on related issues and is knowledgeable about the Lanterman Act. Her professed ignorance of the workings of the Lanterman Act regarding SLS was not credible.

32. Claimant's mother was also unpersuasive in her explanation why she did not provide the requested documentation to the Service Agency. She blamed her prior tax preparer for faulty advice. She contended that she misfiled the first request for documentation she received from the Service Agency. None of these excuses account for her failure to provide the Service Agency the documents it requested on multiple occasions. She never offered a valid explanation for that failure.

33. Claimant's mother intimated that the Service Agency's Executive Director had previously consented to her using SLS funding for several of the expenses in question, such as the mortgage, utilities, etc. However, she offered no corroboration for her testimony, and no verification in writing of such consent from the Executive Director. On the other hand, it is clear from the few letters the Executive Director sent to Claimant's mother that he had not before consented to such expenditures.

34. Claimant's step-father testified that the current SLS vendorization should continue because the monthly SLS rate and costs are lower and more cost-effective than what an agency vendor could provide for Claimant. There was insufficient evidence to establish that the current SLS rate and costs are lower and more cost-effective. The proposed budget prepared by the family includes expenses prohibited by the Lanterman Act, such as mortgage and household expenses, and even projected repairs to the roof and air conditioning of the home owned by Claimant's parents. The proposed budget prepared by the family is otherwise based on unsupported costs and projections, and would be supported only by the very same documentation the Service Agency has requested but not been provided.

Moreover, no evidence was presented regarding what other agencies may charge for Claimant's SLS program for purposes of a valid comparison.

35. Claimant's SLS employee Fernando testified in support of Claimant's mother's argument that Claimant requires 24-hour per day awake staffing. He works full-time, each day, while his wife Delia works 20 hours per week. He testified that he works at least 18 hours per day caring for Claimant. That testimony was not persuasive. No documentation or payroll records were submitted to verify his testimony. Moreover, he admitted that he is not paid per hour but is given the same amount of pay regardless of how many hours he works, and that he and his wife do not pay room and board. These latter two concepts are inconsistent with the spirit and intent of the Lanterman Act. Under these circumstances, Fernando's testimony did not establish that the current level of SLS funding attributed by Claimant's mother to his labor costs is accurate or warranted. During the hearing, neither Fernando nor Claimant's mother addressed any of the health concerns that Claimant's mother has consistently maintained require 24-hour per day awake staffing.

## DISCUSSION

### *Jurisdiction and Burden of Proof*

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant timely requested a hearing to appeal the Service Agency's proposed reduction of his SLS funding. Jurisdiction in this case was thus established. (Factual Findings 1-8.)

A regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proof regarding its proposed reduction of Claimant's SLS funding. (Factual Findings 1-8.)

### *Supported Living Services*

Section 4689 discusses SLS programs. Subdivision (i) provides that a regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except when the regional center executive director verifies in writing that making those payments is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.

Section 4689, subdivision (k), requires that regional centers shall ensure that the supported living services vendors' administrative costs are necessary and reasonable, given the particular services that they are providing and the number of consumers to whom the vendor provides services. Section 4689, subdivision (l), requires that regional centers shall ensure that the most cost-effective of the rate methodologies is utilized to determine the negotiated rate for vendors of supported living services.

California Code of Regulations, title 17, section 50604, subdivision (d), provides that, "[a]ll service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program."

California Code of Regulations, title 17, section 54326, subdivision (a)(3)(A), provides that, "[a]ll vendors shall: [m]aintain records of services provided to consumers in sufficient detail to verify delivery of the units of service billed. Such records shall be maintained for a minimum of five years from the date of final payment for the State fiscal year in which services were rendered or until audit findings have been resolved, whichever is longer."

In this case, the Service Agency established that Claimant would be appropriately cared for by a monthly SLS payment of \$4,670.96. In reaching this conclusion, the Service Agency considered Claimant's mother's incomplete records, Claimant's time and care at a day program, his IHSS hours, and his current care needs. Consideration of these factors is appropriate. (Welf. & Inst. Code, § 4689, subd. (f).)

Claimant's mother includes rent, mortgage, or lease, and household payments in Claimant's SLS expenses. The Legislature has prohibited these expenses. (Welf. & Inst. Code, § 4689, subd. (h).) The Service Agency concluded that Claimant does not qualify for an exemption from this prohibition, nor did Claimant's mother prove she has ever been subject to it. (Welf. & Inst. Code, § 4689, subd. (i).)

Claimant's mother failed to provide the Service Agency with any evidence to support Claimant's current SLS payment. She failed to offer evidence of the same at hearing. Her consistent failure to respond to the Service Agency's numerous requests for documentation leads one to reasonably conclude that Claimant's mother has not maintained that documentation. This is a violation of section 4689, as well as regulations that were promulgated long ago. (Cal. Code Regs., tit. 17, §§ 50604 & 54326.) Claimant's mother offered no valid reason for failing to maintain documentation that would support Claimant's current SLS expenses.

Her various arguments in support of the current funding level were unpersuasive, either because they were not credible or because they were not supported with corroborating evidence. Claimant may not include in his SLS program expenses such as mortgage or utilities costs incurred by his parents for their home. The labor costs attributed to Fernando by Claimant's mother were unsupported. The only valid expenses substantiated by



documentation support a monthly SLS rate of \$4,670.96. In sum, the Service Agency has met its burden in showing by a preponderance of the evidence that the proposed reduced SLS monthly payment of \$4,670.96 will meet Claimant's needs.

### LEGAL CONCLUSION

Cause exists to deny Claimant's appeal pursuant to Welfare and Institutions Code section 4689, and California Code of Regulations, title 17, sections 50604, 54326. (Factual Findings 1-35 and Discussion.)

### ORDER

Claimant's appeal is denied. The Service Agency may reduce Claimant's authorized monthly rate for supported living services to \$4,670.96.

DATE: October 27, 2011

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ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.